

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,  
Petitioner,  
v.  
FRANCISCO JAQUEZ,  
Respondent.

Case No. [16-cv-04763-PJH](#)

**ORDER DISMISSING CASE AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

Re: Dkt. No. 7

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenged a 2005 conviction from the Lake County Superior Court. However, court records indicated that petitioner already filed a habeas petition in this court challenging the same conviction. *See Seals v. Jaquez*, Case No. 10-cv-3707-PJH. That case was dismissed with prejudice as barred by the statute of limitations and was affirmed by the Ninth Circuit. The court ordered petitioner to show cause why this case should not be dismissed as a successive petition. He has filed a response.

“A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . .” 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to

1 establish by clear and convincing evidence that, but for  
2 constitutional error, no reasonable factfinder would have  
3 found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

4 "Before a second or successive application permitted by this section is filed in the  
5 district court, the applicant shall move in the appropriate court of appeals for an order  
6 authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).  
7 Petitioner states that he recently filed a request with the Ninth Circuit and is waiting for a  
8 response. This case is dismissed without prejudice and petitioner may proceed with a  
9 successive petition if he obtains permission from the Circuit.

### 10 CONCLUSION

11 1. Petitioner's motion for an extension (Docket No. 7) is **GRANTED** and the  
12 response is deemed timely filed.

13 2. The petition is **DISMISSED** without prejudice for the reasons stated above.  
14 Because reasonable jurists would not find the result here debatable, a certificate of  
15 appealability ("COA") is **DENIED**. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)  
16 (standard for COA). The clerk shall close the file.

17 **IT IS SO ORDERED.**

18 Dated: November 3, 2016



19  
20 PHYLLIS J. HAMILTON  
21 United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,  
Plaintiff,

v.

FRANCISCO JAQUEZ,  
Defendant.

Case No. [16-cv-04763-PJH](#)

**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 3, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael I Brown-Seals ID: #V-77488  
Pelican Bay State Prison C-1-A#102 SHU  
P.O. Box 7500  
Crescent City, CA 95532-7000

Dated: November 3, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
Nichole Peric, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON